

F. F. DAVENPORT

IBLA 82-1244

Decided November 9, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, returning, unrecorded, certain instruments relating to an unpatented mining location, and declaring the claim abandoned and void. 3833 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a copy of the notice of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

The conclusive presumption which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the

Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: F. F. Davenport, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

F. F. Davenport, for the Atlas Trust, appeals the July 23, 1982, decision of the Oregon State Office, Bureau of Land Management (BLM), which returned without recordation the 1981 affidavit ^{1/} of assessment work for the Dusty Mine placer mining claim, and a copy of a quitclaim deed conveying title to the claim to the Atlas Trust, because the notice of location for the claim had never been filed with BLM as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), and 43 CFR 3833.1-2.

The Dusty Mine placer claim is situated in SE 1/4 SW 1/4 sec. 1, T. 38 S., R. 4 W., Willamette meridian, Jackson County, Oregon, on revested Oregon and California Railroad lands. There is no indication in the record that the claim was recorded with BLM as required by the Act of April 8, 1948, 62 Stat. 162.

Appellant states he recorded the quitclaim deed in Jackson County, Oregon, April 5, 1982, and thereafter transmitted a copy of the recorded deed to the Medford, Oregon, district office of BLM, from whence it was returned with advice that the instruments had to be filed with the Oregon State Office in Portland. The quitclaim deed and the affidavit of assessment work for the year ending September 1, 1982, were then transmitted to Portland, where they were received July 2, 1982. As the filing with the State Office was made within 90 days after recording of the quitclaim deed in Jackson County, appellant contends he complied with the statutory requirement. Appellant states his belief that the claim was located prior to October 21, 1976.

[1] Section 314 of FLPMA requires that the owner of a pre-FLMA unpatented mining claim must file in the proper office of BLM a copy of the recorded notice of location and evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and evidence of annual assessment work or a notice of intention to hold the claim prior to December 31 of every calendar year thereafter. The filing requirements of FLPMA are mandatory, not discretionary. Failure to comply with the statutory requirements is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with the owners of the claim. This Board has no authority to excuse failure to comply with the statutory requirements of

^{1/} The proof of assessment work submitted by appellant was for the assessment year ending Sept. 1, 1982, not 1981.

recording or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

So, in this case, where the claim was located prior to October 21, 1976, and no copy of the location notice and evidence of assessment work were filed by October 22, 1979, the claim was properly declared invalid.

[2] The conclusive presumption of abandonment which attends the failure to file timely an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, *supra* at 192, 88 I.D. at 371-72.

As the required instrument relating to this claim was not filed with BLM on or before October 22, 1979, BLM properly returned, without recording, the quitclaim deed and evidence of assessment work for 1982.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

